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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF
21 AMERICA,

22 Plaintiff,

23 v.

24 ADELINE R. BENNETT, MD
LIVING TRUST and PITTS
25 GRANDCHILDREN'S
TRUST,

26 Defendants.
27
28

CIVIL ACTION NO. _____
CONSENT DECREE

CV06-0238 DDP

AJWx

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1 I. BACKGROUND

2
3 A. The United States of America ("United States"), on behalf of the
4 Administrator of the United States Environmental Protection Agency ("EPA"), has
5 concurrently filed a complaint in this matter pursuant to Sections 106 and 107 of
6 the Comprehensive Environmental Response, Compensation, and Liability Act
7 ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

8 B. The United States in its complaint seeks, inter alia: payment of costs
9 incurred by EPA and performance of certain response work by the defendants at
10 the Waste Disposal, Inc. ("WDI") Superfund Site in Santa Fe Springs, California,
11 consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended)
12 ("NCP").

13 C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA,
14 42 U.S.C. § 9621(f)(1)(F), EPA notified the California Department of Toxic
15 Substances Control ("DTSC") and the Hazardous Substance Account (collectively
16 referred to as the "State") on April 10, 2001, of negotiations with potentially
17 responsible parties regarding the implementation of the remedial design and
18 remedial action for the Site, and EPA has provided the State with an opportunity
19 to participate in such negotiations and be a party to this Consent Decree.
20

21 D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C.
22 § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration,
23 the Department of the Interior, and the natural resource trustees for the State of
24 California on October 5 and 9, 2001, of negotiations with potentially responsible
25 parties regarding the release of hazardous substances that may have resulted in
26 injury to the natural resources under Federal and state trusteeship and encouraged
27 the trustees to participate in the negotiation of this Consent Decree.
28

1 E. The defendants that have entered into this Consent Decree ("Settling
2 Defendants") do not admit any liability to the Plaintiff arising out of the
3 transactions or occurrences alleged in the complaint, nor do they acknowledge that
4 the release or threatened release of hazardous substances at or from the Site
5 constitutes an imminent or substantial endangerment to the public health or
6 welfare or the environment.

7 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
8 the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix
9 B, by publication in the Federal Register on July 22, 1987, 52 Fed. Reg. 27620.
10

11 G. In response to a release or a substantial threat of a release of
12 hazardous substances at or from the Site, EPA commenced on December 22, 1987,
13 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to
14 40 C.F.R. § 300.430.

15 H. EPA completed a Remedial Investigation ("RI") Report in November,
16 1990, and several potentially responsible parties ("PRPs") at the Site completed a
17 Supplemental Feasibility Study ("SFS") Report in May, 2001.
18

19 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
20 published notice of the completion of the SFS and of the proposed plan for
21 remedial action on May 31, 2001, in a major local newspaper of general
22 circulation. EPA provided an opportunity for written and oral comments from the
23 public on the proposed plan for remedial action. A copy of the transcript of the
24 public meeting is available to the public as part of the administrative record upon
25 which the Regional Administrator based the selection of the response action.

26 J. The decision by EPA on the remedial action to be implemented at the
27 Site is embodied in a final Amended Record of Decision ("Amended ROD"),
28

1 executed on June 21, 2002, on which DTSC has given its concurrence. The
2 Amended ROD includes a responsiveness summary to the public comments.
3 Notice of the final plan was published in accordance with Section 117(b) of
4 CERCLA.

5 K. The Parties recognize, and the Court by entering this Consent Decree
6 finds, that this Consent Decree has been negotiated by the Parties in good faith and
7 implementation of this Consent Decree will expedite the cleanup of the Site and
8 will avoid prolonged and complicated litigation between the Parties, and that this
9 Consent Decree is fair, reasonable, and in the public interest.
10

11 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

12 II. JURISDICTION
13

14 1. This Court has jurisdiction over the subject matter of this action
15 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and
16 9613(b). This Court also has personal jurisdiction over the Settling Defendants.
17 Solely for the purposes of this Consent Decree and the underlying complaint,
18 Settling Defendants waive all objections and defenses that they may have to
19 jurisdiction of the Court or to venue in this District. Settling Defendants shall not
20 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and
21 enforce this Consent Decree.
22

23 III. PARTIES BOUND
24

25 2. This Consent Decree applies to and is binding upon the United States
26 and upon Settling Defendants and their heirs, successors and assigns. Any change
27 in ownership or corporate status of Settling Defendants including, but not limited
28 to, any transfer of assets or real or personal property, shall in no way alter Settling
Defendants' responsibilities under this Consent Decree, except as otherwise

1 provided in Subparagraph 9.b.

2 3 IV. DEFINITIONS

4 3. Unless otherwise expressly provided herein, terms used in this
5 Consent Decree which are defined in CERCLA or in regulations promulgated
6 under CERCLA shall have the meaning assigned to them in CERCLA or in such
7 regulations. Whenever terms listed below are used in this Consent Decree or in
8 the appendices attached hereto and incorporated hereunder, the following
9 definitions shall apply:

10 "Amended Record of Decision" or "Amended ROD" shall mean the EPA
11 Amended Record of Decision at the Site, signed on June 21, 2002, by the
12 Regional Administrator, EPA Region IX, or his/her delegate, and all attachments
13 thereto. The Amended ROD is attached as Appendix A.
14

15 "Appraisal" shall mean a written statement independently and impartially
16 prepared by a qualified and California-licensed appraiser setting forth an opinion
17 of defined value of the Property as of a specific date, supported by the presentation
18 and analysis of relevant market information. The appraisal shall conform to the
19 Uniform Standards of Professional Appraisal Practice.

20 "CERCLA" shall mean the Comprehensive Environmental Response,
21 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
22

23 "Consent Decree" shall mean this Decree and all appendices attached hereto
24 (listed in Section XX). In the event of conflict between this Decree and any
25 appendix, this Decree shall control.

26 "Day" shall mean a calendar day unless expressly stated to be a working
27 day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal
28

1 holiday. In computing any period of time under this Consent Decree, where the
2 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
3 until the close of business of the next working day.

4 “DTSC” shall mean the California Department of Toxic Substances Control
5 and any successor departments or agencies.

6
7 “Effective Date” shall be the effective date of this Consent Decree as
8 provided in Paragraph 66.

9 “Environmental Restriction Covenant” shall mean a restrictive covenant
10 under California law, running with the land, that (i) grants a right of access for the
11 purpose of conducting any activity related to the response actions described in the
12 Amended ROD, including, but not limited to, those activities listed in
13 Paragraph 10.a of this Consent Decree, and (ii) grants the right to enforce the
14 land/water use restrictions listed in Paragraph 11.a of this Consent Decree, or
15 other restrictions that EPA determines are necessary to implement, ensure non-
16 interference with, or ensure the protectiveness of the remedial measures to be
17 performed in accordance with the Amended ROD; (iii) provides that EPA and
18 DTSC shall be third party beneficiaries of the environmental restriction covenant
19 with rights to enforce the environmental restriction covenant; and (iv) is in
20 substantially the form of Appendix C.

21
22 “EPA” shall mean the United States Environmental Protection Agency and
23 any successor departments or agencies of the United States.

24 “Extended Required Sale Date” shall mean a date approved by EPA
25 pursuant to Paragraph 23.b. by which Settling Defendants must effectuate a
26 Transfer of the Property, once a written request has been made by Settling
27 Defendants for an extension of the Required Sale Date.
28

1 “Fair Market Value,” except in the event of a foreclosure or transfer by deed
2 or other assignment in lieu of foreclosure, shall mean the price at which the
3 Property or any portion thereof would change hands between a willing buyer and a
4 willing seller under actual market conditions, neither being under any compulsion
5 to buy or to sell and both having reasonable knowledge of relevant facts. In the
6 event of a transfer by foreclosure, “Fair Market Value” shall mean the amount
7 obtained at the foreclosure sale. In the event of a transfer by a deed or other
8 assignment in lieu of foreclosure, “Fair Market Value” shall mean the balance of
9 the mortgage on the Property or any portion thereof at the time of the transfer.

10 “Interest,” shall mean interest at the rate specified for interest on
11 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
12 § 9507, compounded annually on October 1 of each year, in accordance with 42
13 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
14 time the interest accrues. The rate of interest is subject to change on October 1 of
15 each year.

16
17 “National Contingency Plan” or “NCP” shall mean the National Oil and
18 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
19 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and
20 any amendments thereto.

21 “Net Sales Proceeds,” shall mean the total value of all consideration
22 received by Settling Defendants for all Transfers of the Property, combined, (or if
23 the consideration cannot be determined, the Fair Market Value of the Property or
24 any portion thereof) less (i) closing costs (including appraisal costs and real estate
25 commissions incurred by a California-licensed real estate broker other than
26 Settling Defendants), limited to those reasonably and necessarily incurred, as
27 determined by EPA, and actually paid by Settling Defendants associated with the
28

1 Transfer of the Property or any portion thereof, and (ii) federal and state taxes
2 owed on the proceeds. Settling Defendants shall provide EPA with documentation
3 sufficient to show the total value of all consideration received by Settling
4 Defendants for each Transfer (or if the consideration cannot be determined, the
5 Fair Market Value of the Property or any portion thereof) at the time of each
6 Transfer, the amount of the proceeds of the Transfer, and the amounts
7 corresponding to items (i) and (ii) above. This documentation shall include, but
8 not be limited to, the report of an Appraisal (to be paid for by Settling Defendants
9 but deductible as part of the closing costs as set forth above). The documentation
10 shall also include, either as part of the report or separately, (1) a tax statement
11 showing the assessed valuation of the Property or any portion thereof for each of
12 the three years immediately preceding the Transfer and (2) a schedule showing all
13 outstanding indebtedness on the Property or any portion thereof.

14 "Paragraph" shall mean a portion of this Consent Decree identified by an
15 arabic numeral or an upper case letter.

16
17 "Parties" shall mean the United States and the Settling Defendants.

18 "Past Response Costs" shall mean all costs, including, but not limited to,
19 direct and indirect costs, that the United States paid at or in connection with the
20 Site through October 15, 2004, plus Interest on all such costs which has accrued
21 pursuant to 42 U.S.C. § 9607(a) through such date.

22
23 "Performance Standards" shall mean those cleanup standards, standards of
24 control, response actions, and other substantive requirements, and criteria or
25 limitations set forth in the Amended ROD.

26 "Plaintiff" shall mean the United States.
27
28

1 “Property” shall mean those portions of the WDI Superfund Site owned by
2 Settling Defendants, in whole or in part, and described more particularly in
3 Appendix D. The property consists of four parcels, identified by Assessor’s Parcel
4 Nos. 8167-002-025, 8167-002-026, 8167-002-030, and 8167-002-051.

5 “Remedial Action” shall mean the actions taken to implement the remedy
6 for the Site pursuant to the Amended ROD.
7

8 “Required Sale Date” shall mean the date two (2) years after EPA’s
9 approval of the Final Construction As-Built Report for the Remedial Action.

10 “Response Actions” shall mean any and all removal and remedial actions
11 and all enforcement activities related thereto.
12

13 “Response Costs” shall mean all costs, including, but not limited to, direct
14 or indirect costs, that the United States has paid or will pay in connection with the
15 Site, that are not inconsistent with the NCP, and all necessary costs that any other
16 person has paid or will pay in connection with the Site that are consistent with the
17 NCP.

18 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
19 §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).
20

21 “Section” shall mean a portion of this Consent Decree identified by a
22 Roman numeral.

23 “Settling Defendants” shall mean the Adeline R. Bennett, MD Living Trust
24 (“Bennett Trust”) and the Pitts Grandchildren’s Trust (“Pitts Trust”).
25

26 “Site” shall mean the WDI Superfund Site, encompassing approximately
27 38 acres, located at Los Nietos Road at Greenleaf Avenue in Santa Fe Springs, Los
28 Angeles County, California, and depicted generally on the map attached as
Appendix B.

1 “State” shall mean the State of California.

2 “Transfer” shall mean each sale, assignment, conveyance, or exchange by
3 Settling Defendants (or their successors or heirs) of the Property, or any portion
4 thereof, or of an entity owning the Property or any portion thereof, where title to
5 the Property (or any portion or interest thereof) or to the entity owning the
6 Property or any portion thereof (i) is transferred and Fair Market Value is received
7 in consideration, or (ii) is transferred involuntarily by operation of law, including
8 foreclosure and its equivalents following default on the indebtedness secured, in
9 whole or in part, by the Property, or any portion thereof, including, but not limited
10 to, a deed or other assignment in lieu of foreclosure.
11

12 “United States” shall mean the United States of America.

13 “Waste Material(s)” shall mean (1) any “hazardous substance” under
14 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or
15 contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste”
16 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); (4) any “hazardous
17 substance” under California Health and Safety Code §§ 25316 and 25317; and
18 (5) all material identified as waste or sump material in site investigations
19 conducted prior to the Effective Date of this Consent Decree, irrespective of
20 whether it is classified as a hazardous substance, pollutant or contaminant, or solid
21 waste under the above statutes.
22

23 “WDIG” shall mean the Waste Disposal, Inc. Group.

24 “WDIG Site Trust” shall mean the trust established by certain other PRPs
25 pursuant to the Consent Decree lodged in this Court in Civil Action No. 03-1593
26 WJR. The WDIG Site Trust shall be the covenantee of the Environmental
27 Restriction Covenant.
28

1 “WDI Special Account” shall mean the special account established at the
2 Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3),
3 within the EPA Hazardous Substance Superfund.

4 “Work” shall mean all activities Settling Defendants are required to perform
5 under this Consent Decree, except those required by Paragraph 20 (Initial
6 Payment), Paragraph 21 (Payment of Proceeds of Sale of Property and Section
7 XVII (Retention of Records)).
8

9 V. GENERAL PROVISIONS

10 4. Objectives of the Parties. The objectives of the Parties in entering
11 into this Consent Decree are to protect public health or welfare or the environment
12 at the Site by the implementation of and compliance with access agreements and
13 institutional controls at the Site by the Settling Defendants, and to resolve the
14 claims of Plaintiff against Settling Defendants as provided in this Consent Decree.
15

16 5. Commitments by Settling Defendants.

17 a. Settling Defendants shall perform the Work in accordance with
18 this Consent Decree and the Amended ROD, including, but not limited to,
19 granting access rights and implementing institutional controls in the form of an
20 Environmental Restriction Covenant on the Property at the Site owned or co-
21 owned by Settling Defendants, as required herein. Settling Defendants shall
22 ensure compliance with the Environmental Restriction Covenant by any tenants or
23 other persons on the Property during any time that Settling Defendants own or
24 control the Property or any portion thereof. Settling Defendants shall also
25 reimburse the United States for Past Response Costs as provided in this Consent
26 Decree.
27
28

1 b. Settling Defendants shall make best efforts to cooperate with
2 any persons implementing all or any portion of the Remedial Action pursuant to
3 the Amended ROD under EPA's oversight. Best efforts shall include, but not be
4 limited to, actions to facilitate any relocations on or from the Property that may be
5 required by EPA to implement the Remedial Action.

6 c. Each Settling Defendant represents that it owns a one-half
7 undivided interest in each of the four parcels that comprise the Property. In
8 accordance with Paragraph 23, Settling Defendants shall sell the Property at Fair
9 Market Value and shall each receive 50% of the Net Sales Proceeds. Each Settling
10 Defendant shall pay to EPA a portion of its 50% share, in accordance with
11 Paragraph 21.

12 d. The obligations of Settling Defendants to perform the Work are
13 joint and several. In the event of the insolvency or other failure of any one or
14 more Settling Defendants to implement the requirements of this Consent Decree,
15 the remaining Settling Defendant shall complete all such requirements.

16 6. Certification of Settling Defendants. By signing this Consent Decree,
17 each Settling Defendant certifies individually, that, to the best of its knowledge
18 and belief, it has:
19

20 a. conducted a thorough, comprehensive, good faith search for
21 documents, and has fully and accurately disclosed to EPA, all information
22 currently in its possession, or in the possession of its officers, directors,
23 employees, contractors, agents, trustees, or beneficiaries, which relates in any way
24 to the ownership, operation, or control of the Site, or to the ownership, possession,
25 generation, treatment, transportation, storage, or disposal of a hazardous
26 substance, pollutant, or contaminant at or in connection with the Site, except to the
27 extent that a Settling Defendant has asserted that certain documents or information
28

1 are privileged under the attorney client privilege. If a Settling Defendant has
2 asserted such a privilege, Settling Defendant certifies that it has provided Plaintiff
3 with the following: (1) the title of the document, record, or information; (2) the
4 date of the document, record, or information; (3) the name and title of the author
5 of the document, record, or information; (4) the name and title of each addressee
6 and recipient; (5) a description of the contents of the document, record, or
7 information; and (6) the privilege asserted by Settling Defendant.;

8 b. not altered, mutilated, discarded, destroyed or otherwise
9 disposed of any records, documents, or other information relating to its potential
10 liability regarding the Site after notification of potential liability or the filing of a
11 suit against it regarding the Site; and
12

13 c. fully complied with any and all EPA requests for information
14 regarding the Site pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e).

15 7. Compliance With Applicable Law. All activities undertaken by
16 Settling Defendants pursuant to this Consent Decree shall be performed in
17 accordance with the requirements of all applicable federal and state laws and
18 regulations. Settling Defendants must also comply with all applicable or relevant
19 and appropriate requirements of all federal and state environmental laws as set
20 forth in the Amended ROD. The activities conducted pursuant to this Consent
21 Decree, if approved by EPA, shall be considered to be consistent with the NCP.
22

23 8. Permits.

24 a. This Consent Decree is not, and shall not be construed to be, a
25 permit issued pursuant to any federal or state statute or regulation.
26
27
28

1 9. Notice to Successors-in-Title.

2 a. At least 30 days prior to the conveyance of any interest in
3 property located within the Site including, but not limited to, fee interests,
4 leasehold interests, and mortgage interests, Settling Defendants shall give the
5 grantee written notice of (i) this Consent Decree and (ii) the Environmental
6 Restriction Covenant, attached as Appendix C. At least 15 days prior to such
7 conveyance, Settling Defendants shall also give written notice to EPA of the
8 proposed conveyance, including the name and address of the grantee, and the date
9 on which notice of the Consent Decree and Environmental Restriction Covenant,
10 was given to the grantee.

11
12 b. In the event of any such conveyance, the Settling Defendants'
13 obligations under this Consent Decree, including, but not limited to, their
14 obligation to abide by the land/water use restrictions described in Paragraph 11.a,
15 shall continue to be met by the Settling Defendants, except for those obligations
16 described in Paragraphs 10, 11.a(13), 11.a(21), 11.a(22), 11.a(23), 11.a(24), and
17 18.c.

18 VI. ACCESS AND INSTITUTIONAL CONTROLS

19
20 10. Settling Defendants shall:

21 a. commencing on the date of lodging of this Consent Decree,
22 provide the United States, its representatives, including EPA and its contractors;
23 and any PRPs conducting response actions at the Site, including their agents and
24 contractors, with access at all reasonable times to the Property for the purpose of
25 conducting any response actions related to the Site including, but not limited to,
26 the following activities:
27
28

1 (1) Monitoring of investigation, removal, remedial or other
2 response actions at the Site;

3 (2) Verifying any data or information submitted to the
4 United States;

5 (3) Conducting investigations relating to contamination at or
6 near the Site;

7 (4) Obtaining samples;

8 (5) Assessing the need for, planning, or implementing
9 additional response actions at or near the Site;

10 (6) Inspecting and copying records, operating logs, contracts,
11 or other documents maintained or generated by Settling Defendants or their
12 agents, consistent with Section XV (Access to Information);

13 (7) Assessing Settling Defendants' compliance with this
14 Consent Decree;

15 (8) Determining whether the Site or other property is being
16 used in a manner that is prohibited or restricted, or that may need to be prohibited
17 or restricted, by or pursuant to this Consent Decree;

18 (9) Installing, monitoring, and maintaining liquid,
19 groundwater, soil gas and other wells or probes; and

20 (10) Installing, monitoring, and operating any monitoring
21 and extraction system, including liquids and gas extraction systems.

1 11. Land/Water Use Restrictions.

2 a. Settling Defendants shall, commencing on the date of lodging
3 of this Consent Decree, refrain from using the Site and Property in any manner
4 that would interfere with or adversely affect the implementation, integrity, or
5 protectiveness of the remedial measures implemented pursuant to the Amended
6 ROD. Settling Defendants shall comply with the following land/water use
7 restrictions:
8

9 (1) Placement of warning signs or other posted information
10 shall be allowed and, once posted, no removal or interference with such signs or
11 information shall be permitted.
12

13 (2) Placement of Site access controls, such as gates or
14 fencing, shall be allowed and shall not be damaged or circumvented.
15

16 (3) The Site or such other property shall not be used in any
17 manner that may interfere with or affect the integrity of the remedial cap or
18 other components of the remedy, as constructed pursuant to the Amended
19 ROD.
20

21 (4) Construction not approved by EPA that impacts any of
22 the remedial capping or other remedy components shall not occur.
23

24 (5) No interferences with or alterations to the grading,
25 vegetation and surface water and drainage controls shall be made.
26

27 (6) Portions of the Site or Property underlain by Waste
28 Materials or in soil gas noncompliance areas shall not be regraded.

1 (7) Areas of asphalt or concrete pavement shall not be
2 removed or improved.

3 (8) No penetrations through or interferences (including, but
4 not limited to, utility trench excavations, excavations for fence posts,
5 excavations for planting trees or large bushes, foundation excavations, and
6 foundation piles) with the remedial cap or any other areas with remedial
7 controls shall be made.
8

9 (9) Deep-rooting plants (plants whose root systems will
10 penetrate more than two feet below ground surface) shall not be planted.

11 (10) Settling Defendants or any other owner or user of the
12 Property shall obtain approval from EPA for settings of irrigation controls
13 in areas underlain by Waste Materials. Such settings shall not be changed
14 without the prior written approval of EPA in accordance with Paragraph
15 11.b.
16

17 (11) Drainage channels and pipes shall not be blocked,
18 rerouted or otherwise interfered with.

19 (12) No new openings shall be made in building floor slabs in
20 buildings located over Waste Materials or over soil gas noncompliance
21 areas.
22

23 (13) Integrity of existing and future foundations shall be
24 maintained in areas underlain by Waste Materials and in soil gas
25 noncompliance areas. All cracks or damage in such foundations shall be
26 reported to EPA and shall be repaired by the Settling Defendants.

27 (14) Indoor gas controls shall not be circumvented.
28

1 (15) Indoor gas sensors or alarms shall not be turned off or
2 interfered with.

3 (16) Soil gas control systems shall not be turned off or
4 interfered with.

5
6 (17) Monitoring points, including but not limited to
7 groundwater monitoring wells, soil gas probes, reservoir leachate collection
8 wells, soil gas vents, and survey monuments, shall not be blocked or
9 otherwise obstructed.

10 (18) Monitoring wells shall not be opened; nothing shall be
11 placed into the monitoring wells.

12
13 (19) Liquids recovery systems, liquids treatment systems, and
14 treated liquids storage facilities shall not be turned off or interfered with.

15 (20) Groundwater supply or monitoring wells shall not be
16 constructed.

17
18 (21) Owners of the Site or Property shall disclose all
19 land/water use restrictions to all tenants on the property.

20 (22) Settling Defendants shall inform EPA of the identities of
21 all tenants on the Property.

22
23 (23) During construction, excavation, or grading of any type
24 on the Property, Settling Defendants shall take measures to ensure that there
25 is no offsite migration of dust, odors or organic vapors. During such
26 activities, Settling Defendants shall take appropriate measures to protect the
27 health and welfare of onsite personnel and workers and to prevent offsite
28 impacts.

1 (24) Settling Defendants must obtain prior written approval
2 for all building or site modifications on the Property from EPA in
3 accordance with Paragraph 11.b.

4 (25) Settling Defendants shall not excavate Waste Materials
5 on the Site.

6 (26) No new construction shall occur on the Site without the
7 prior written approval of EPA in accordance with Paragraph 11.b and the
8 following requirements:
9

10 (a) New construction shall be supported by subsurface
11 explorations and analytical laboratory data to characterize the
12 construction area for the possible existence of Waste Materials.
13

14 (b) If Waste Materials are discovered in the
15 construction area, they shall be remediated or buildings and structures
16 must be appropriately designed to protect occupants.

17 (c) Appropriate worker and public health and safety
18 precautions, including but not limited to dust control, safety plans,
19 and other forms of worker protection, must be taken prior to approval
20 of construction.
21

22 (27) Boreholes, foundation piles, or other subsurface
23 penetrations into the reservoir or any other area of the site which could
24 create conduits allowing Waste Materials to migrate to groundwater shall
25 not be made.

26 (28) Construction workers shall be provided with appropriate
27 personal protective equipment while they are working at the site.
28

1 (29) Pesticides or herbicides shall not be applied to the
2 capped areas of the Site or to areas surrounding monitoring points, except as
3 approved by EPA.

4 (30) Use of any septic tanks on the Property shall be
5 discontinued and such tanks shall be decommissioned in accordance with
6 local regulations.

7
8 (31) The Site or such other property shall not be used or
9 redeveloped for residential use; use as a hospital, school for people aged 21
10 and under, or day care center; or other similar uses by sensitive receptors.

11 b. Any person seeking an exception to the land/water use
12 restrictions in Paragraph 11.a shall obtain the prior written approval of EPA. Any
13 person seeking an exception shall submit a request in writing to EPA, with all
14 necessary supporting documentation (such documentation may include appropriate
15 design documents, work plans, and/or calculations). EPA shall respond to such
16 request within a reasonable time, by: 1) providing written approval for the
17 exception; 2) requesting further information in support of the request; 3) providing
18 written approval of the exception with modification; or 4) denying the request.
19 The decision of EPA shall be final and shall not be subject to the dispute
20 resolution procedures of this Consent Decree or to judicial review.

21
22 12. Environmental Restriction Covenant:

23 a. Settling Defendants shall, within 30 days of entry of this
24 Consent Decree, provide to EPA an updated title search and, if it is determined by
25 EPA that nothing has occurred since the effective date of the title commitment
26 submitted to EPA on July 14, 2005 to affect the title adversely, record the
27 Environmental Restriction Covenant attached as Appendix C with the Recorder's
28

1 Office of Los Angeles County. Within 30 days of recording the Environmental
2 Restriction Covenant, Settling Defendants shall provide EPA with a final title
3 insurance policy, or other final evidence of title reasonably acceptable to EPA, and
4 a certified copy of the original recorded Environmental Restriction Covenant
5 showing the clerk's recording stamps.

6
7 b. Settling Defendants shall provide a copy of the Environmental
8 Restriction Covenant to the WDIG Site Trust for execution, at an address to be
9 provided by EPA, prior to Settling Defendants' recordation of the fully executed
10 Environmental Restriction Covenant.

11 c. If EPA determines, based on the updated title search or other
12 available information, that something has occurred since the effective date of the
13 original title commitment to affect the title adversely, EPA may require that
14 Settling Defendants use best efforts to obtain release or subordination of any liens
15 or encumbrances that are adversely affecting title. "Best efforts" includes the
16 payment of reasonable sums of money in consideration of an agreement to release
17 or subordinate a prior lien or encumbrance.

18 d. If, after review of the final title insurance policy, or other final
19 evidence of title, and the certified copy of the original recorded Environmental
20 Restriction Covenant, EPA determines that any portion of the Work has not been
21 completed in accordance with this Consent Decree, EPA will notify Settling
22 Defendants in writing of the activities that must be undertaken by Settling
23 Defendants pursuant to this Consent Decree to complete the Work, provided,
24 however, that EPA may only require Settling Defendants to perform such activities
25 pursuant to this Paragraph to the extent that such activities are consistent with the
26 scope of the remedy selected in the Amended ROD. EPA will set forth in the
27 notice a schedule for performance of such activities consistent with the Consent
28

1 Decree. Settling Defendants shall perform all activities described in the notice in
2 accordance with the specifications and schedules established therein, subject to
3 their right to invoke the dispute resolution procedures set forth in Section XI
4 (Dispute Resolution).

5 e. Within 30 days of entry of this Consent Decree, Settling
6 Defendants shall submit to EPA draft notices to the holders of the encumbrances
7 described in items 4 - 8, 10, 11, 12, 16 - 21, and 22 of the title commitment
8 submitted to EPA on July 14, 2005. Such notices shall describe the encumbered
9 property; state that the property is part of the Waste Disposal, Inc. Superfund Site,
10 which has been remediated under EPA oversight; describe the ERC to be recorded
11 on the property; and describe the land and water use restrictions contained in the
12 ERC. Within 15 days of EPA's approval and acceptance of the draft notices,
13 Settling Defendants shall send the draft notices to the appropriate addressees by
14 certified mail and shall submit copies of the returned receipts to EPA within
15 15 days of their receipt by Settling Defendants.
16

17 13. If EPA determines that institutional controls in the form of state or
18 local laws, regulations, ordinances or other governmental controls are needed to
19 implement the remedy selected in the Amended ROD, ensure the integrity and
20 protectiveness thereof, or ensure non-interference therewith, Settling Defendants
21 shall cooperate with EPA's efforts to secure such governmental controls.

22 14. Notwithstanding any provision of this Consent Decree, the United
23 States retains all of its information gathering, inspection, and access authorities
24 and rights, as well as all of its rights to require land use restrictions, including
25 enforcement authorities related thereto, under CERCLA, RCRA and any other
26 applicable statute or regulations.
27
28

VII. REMEDY REVIEW

15. Periodic Review. So long as they retain any interest in the Property, Settling Defendants shall cooperate with the conduct of any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. Settling Defendants shall continue to comply with Sections XVI and XVII, even if they no longer have any ownership interest in the Property.

16. EPA Selection of Further Response Actions. If EPA determines, at any time, that the response actions undertaken pursuant to the Amended ROD are not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. Modification of the Land Use Restrictions.

a. If EPA determines that modifications or additions to the land/water use restrictions are necessary to carry out and maintain the effectiveness of the remedy set forth in the Amended ROD, EPA may require that such modifications or additions be incorporated in the land/water use restrictions, provided, however, that a modification or addition may only be required pursuant

1 to this Paragraph to the extent that it is consistent with the scope of the remedy
2 selected in the Amended ROD.

3 b. If Settling Defendants object to any modification or addition
4 determined by EPA to be necessary pursuant to this Paragraph, they may seek
5 dispute resolution pursuant to Section XI (Dispute Resolution), Paragraph 32
6 (record review). The land/water use restrictions shall be modified in accordance
7 with final resolution of the dispute.
8

9 c. Settling Defendants shall implement any land/water use
10 restrictions required by any modifications or additions incorporated in the
11 land/water use restrictions in accordance with this Paragraph.

12 d. Nothing in this Paragraph shall be construed to limit EPA's
13 authority to require performance of further response actions as otherwise provided
14 in this Consent Decree.
15

16 VIII. REPORTING REQUIREMENTS

17 19. All reports and other documents submitted by Settling Defendants to
18 EPA which purport to document Settling Defendants' compliance with the terms
19 of this Consent Decree shall be signed by an authorized representative of the
20 Settling Defendants.
21

22 IX. PAYMENTS FOR RESPONSE COSTS

23 20. Initial Payment.

24 a. Within 30 days of the Effective Date, the Bennett Trust shall
25 pay to EPA \$50,000 in payment for Past Response Costs. Payment shall be made
26 by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice
27 account in accordance with current EFT procedures, referencing USAO File
28

1 Number ____, EPA Site/Spill ID Number 09-C1, and DOJ Case Number 90-11-2-
2 1000/2. Payment shall be made in accordance with instructions provided to the
3 Settling Defendants by the Financial Litigation Unit of the United States
4 Attorney's Office for the Central District of California following lodging of the
5 Consent Decree. Any payments received by the Department of Justice after 4:00
6 p.m. (Eastern Time) will be credited on the next business day.

7
8 b. At the time of payment, Settling Defendants shall send notice
9 that payment has been made to the United States, to EPA and to the Regional
10 Financial Management Officer, in accordance with Section XXVI (Notices and
11 Submissions).

12 c. The amount to be paid by the Bennett Trust pursuant to
13 Paragraph 20.a shall be deposited in the WDI Special Account within the EPA
14 Hazardous Substance Superfund to be retained and used to conduct or finance
15 response actions at or in connection with the Site, or to be transferred by EPA to
16 the EPA Hazardous Substance Superfund.

17 21. Payment of Proceeds of Sale of Property. Settling Defendants agree
18 that they will not sell, assign, convey, encumber, or exchange the Property, or any
19 portion thereof, except by means of a Transfer.
20

21 a. The Pitts Trust shall pay to the United States 90% of its 50%
22 share of the Net Sales Proceeds of the Transfer of the Property or any portion
23 thereof, provided, however, that the Pitts Trust shall not be required to pay to the
24 United States more than \$2,478,000, excluding interest.

25 b. The Bennett Trust shall pay to the United States a portion of its
26 50% share of the Net Sales Proceeds of the Transfer of the Property or any portion
27 thereof according to the formula in Paragraphs 21.b(1) - (4), provided, however,
28

1 that \$50,000 shall be deducted from the total amount to be paid to the United
2 States by the Bennett Trust pursuant to this Paragraph in recognition of the
3 payment made pursuant to Paragraph 20.a, and provided that the Bennett Trust
4 shall not be required to pay to the United States more than \$2,250,000, excluding
5 interest.

6
7 (1) If the Net Sales Proceeds are less than \$1,000,000, the
8 Bennett Trust shall pay to the United States 40% of the Bennett Trust's
9 share of the Net Sales Proceeds.

10 (2) If the Net Sales Proceeds are \$1,000,000 or greater, but
11 less than \$2,000,000, the Bennett Trust shall pay to the United States 60%
12 of the Bennett Trust's share of the Net Sales Proceeds.

13 (3) If the Net Sales Proceeds are \$2,000,000 or greater, but
14 less than \$4,000,000, the Bennett Trust shall pay to the United States 70%
15 of the Bennett Trust's share of the Net Sales Proceeds.

16
17 (4) If the Net Sales Proceeds are \$4,000,000 or greater, the
18 Bennett Trust shall pay to the United States 80% of the Bennett Trust's
19 share of the Net Sales Proceeds.

20 c. Payments to the United States under Paragraphs 21.a. and b.
21 shall be made within 15 days after the close of escrow of the Transfer and shall be
22 made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of
23 Justice account in accordance with current EFT procedures, referencing USAO
24 File Number ____, EPA Site/Spill ID Number 09-C1, and DOJ Case Number 90-
25 11-2-1000/2. Payment shall be made in accordance with instructions provided to
26 the Settling Defendant by the Financial Litigation Unit of the United States
27 Attorney's Office for the Central District of California following lodging of the
28

1 Consent Decree. Any payments received by the Department of Justice after 4:00
2 p.m. (Eastern Time) will be credited on the next business day.

3
4 d. At the time of payment, Settling Defendants shall send notice
5 that payment has been made to the United States, to EPA, and to the Regional
6 Financial Management Officer, in accordance with Section XVIII (Notices and
7 Submissions).

8 e. The total amount to be paid by Settling Defendants pursuant to
9 Paragraphs 21 and 22 shall be deposited in the WDI Special Account within the
10 EPA Hazardous Substance Superfund to be retained and used to conduct or
11 finance response actions at or in connection with the Site, or to be transferred by
12 EPA to the EPA Hazardous Substance Superfund.

13
14 f. At least thirty (30) days prior to any such Transfer, Settling
15 Defendants shall notify the United States of the proposed Transfer, which notice
16 shall include a description of the property to be sold, the identity of the purchaser,
17 the terms of the Transfer, the consideration to be paid, and a copy of the Transfer
18 agreement. The proposed sales price must be at least equal to the Fair Market
19 Value of the Property or any portion thereof based upon an Appraisal obtained
20 within one (1) year prior to the Transfer, unless the United States agrees that a
21 lesser price is appropriate under the circumstances. Settling Defendants shall
22 notify the United States of the completion of the Transfer within (10) days of the
23 date of closing and shall include with such notification a copy of the closing
24 binder, including final executed documentation for the conveyance and a work
25 sheet setting forth the Net Sales Proceeds and the amount payable to EPA.

26 g. Settling Defendants shall be responsible for paying off any
27 mortgages or liens on the Property prior to the Transfer, except for the liens held
28

1 by EPA on the Property pursuant to Section 107(l) of CERCLA, 42 U.S.C.
2 § 9607(l). The amount required to pay off any such mortgages or liens shall not be
3 deducted from the total consideration received by Settling Defendants from each
4 Transfer when calculating the amount of the Net Sales Proceeds.

5 h. In the event of a Transfer of the Property or any portion
6 thereof, Settling Defendants shall continue to be bound by all the terms and
7 conditions, and subject to all the benefits, of this Consent Decree, except if the
8 United States and Settling Defendants modify this Consent Decree in writing.
9

10 i. Settling Defendants shall not assign, sell, or convey the
11 Property or any portion thereof unless Settling Defendants have executed and
12 recorded the Environmental Restriction Covenant pursuant to Paragraph 24 prior
13 to the date of any assignment, sale, or conveyance.

14 22. Bennett Trust Escrow Account. If portions of the Property are subject
15 to separate Transfers, the Bennett Trust shall place 80% of the Net Sales Proceeds
16 for each Transfer into an interest-bearing escrow account at the time of each
17 Transfer. Within 30 days of the Transfer of the last portion of the Property, the
18 amount owed to the United States under Paragraph 21.b. shall be paid to the
19 United States from the escrow account, in accordance with Paragraph 21. In
20 addition, the Bennett Trust shall pay to the United States any interest owed under
21 Paragraph 23.a. within 30 days of the Transfer of the last portion of the Property.
22 Any money remaining in the escrow account shall be paid to the Bennett Trust.
23

24 a. Within thirty (30) days of the Effective Date, the Bennett Trust
25 shall submit a draft of an escrow agreement to effectuate the escrow account
26 described in Paragraph 22 to EPA for review and approval. The Bennett Trust
27 shall establish the escrow account pursuant to the escrow agreement approved by
28 EPA prior to the closing of the first Transfer of any portion of the Property.

1 23. Sale of Property. Settling Defendants shall sell the Property at Fair
2 Market Value by effecting a Transfer of all portions of the Property by the
3 Required Sale Date. EPA shall notify Settling Defendants in writing of the date
4 upon which EPA approved the Final Construction As-Built Report, within fifteen
5 (15) days of the approval.

6 a. If the Property is not sold or otherwise transferred by the
7 Required Sale Date, each Settling Defendant shall also pay to the United States, at
8 the time of payment made pursuant to Paragraph 21, interest on the amount owed
9 to the United States under Paragraph 21, calculated from the Required Sale Date to
10 the date of payment. Each Settling Defendant shall pay all such interest to the
11 United States when the payments under Paragraph 21 are made, in addition to
12 those payments, regardless of whether or not EPA has granted an extension of
13 time under Paragraph 23.b.

14 b. The Settling Defendants may make a request to EPA for an
15 extension of time for the Required Sale Date to take effect. Any such request shall
16 be made in writing to EPA's Project Coordinator at least 30 days prior to the
17 Required Sale Date. If EPA agrees to the extension of time, it shall notify Settling
18 Defendants in writing of the Extended Required Sale Date. EPA's decision on the
19 extension of time shall not be subject to the dispute resolution procedures of this
20 Consent Decree or to judicial review.

21 c. If Settling Defendants fail to sell the Property by the Required
22 Sale Date, or by any Extended Required Sale Date, EPA may take appropriate
23 action to foreclose on its liens on the Property. EPA shall provide notice of its
24 decision to take action to foreclose on its liens at least 60 days before it takes such
25 action. Settling Defendants shall not oppose such foreclosure action, except
26 through the use of the dispute resolution procedures in Section XI of this Consent
27
28

1 Decree, and shall reimburse EPA its costs of foreclosure, including attorneys' fees,
2 in addition to any amounts due under Paragraphs 21.a and 21.b. Such payments
3 shall be considered reimbursement of response costs and shall be made in the
4 manner described in Paragraph 21.c. If EPA forecloses on its liens, the provisions
5 for allocation of each Settling Defendant's share of the Net Sales Proceeds in
6 Paragraphs 21.a and 21.b shall apply, except that the Pitts Trust's payment to the
7 United States shall not be limited to \$2,478,000 and the Bennett Trust's payment
8 to the United States shall not be limited to \$2,250,000.

9
10 d. EPA shall release the lien filed against the Property under
11 Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), at the close of the escrow period
12 for the last Transfer of any portion of the Property.

13 24. Pitts Grandchildren's Trust Deed. At least thirty (30) days before the
14 close of escrow of the first Transfer of any portion of the Property, Settling
15 Defendants shall submit to EPA for review and approval, with respect to the
16 Property or portion of Property, a current title insurance commitment or some
17 other evidence of title reasonably acceptable to EPA, which shows the Property to
18 be free and clear of all prior liens and encumbrances, other than the liens held by
19 EPA on the Property pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l)
20 (except when those liens or encumbrances are approved by EPA, or when, despite
21 best efforts, Settling Defendants are unable to obtain release or subordination of
22 such prior liens or encumbrances). "Best efforts" includes the payment of
23 reasonable sums of money in consideration of an agreement to release or
24 subordinate a prior lien or encumbrance. Also, at least thirty (30) days before the
25 close of escrow of the Transfer, Settling Defendants shall provide a copy of the
26 Environmental Restriction Covenant to the WDIG Site Trust for execution, at an
27 address to be provided by EPA.
28

1 a. The Pitts Grandchildren's Trust shall record the Individual
2 Grant Deed for the Property dated July 1, 1987, a copy of which is attached as
3 Appendix E, prior to the recordation of the deed which effectuates the first
4 Transfer of any portion of the Property.

5 b. After the Individual Grant Deed referenced in Paragraph 24.a.
6 is recorded, but before the recordation of the deed which effectuates the first
7 Transfer of any portion of the Property, Settling Defendants shall again record the
8 Environmental Restriction Covenant attached as Appendix C with the Recorder's
9 Office of Los Angeles County. Within 15 days of recording the Environmental
10 Restriction Covenant again, Settling Defendants shall provide EPA with a final
11 title insurance policy, or other final evidence of title reasonably acceptable to
12 EPA, and a certified copy of the original subsequently recorded Environmental
13 Restriction Covenant showing the clerk's recording stamps.

14 c. Settling Defendants shall not effectuate a Transfer of the
15 Property unless they have recorded the Environmental Restriction Covenant after
16 the recordation of the Individual Grant Deed of the Property to the Pitts
17 Grandchildren's Trust, dated July 1, 1987.

18
19 X. FORCE MAJEURE
20

21 25. "Force majeure," for purposes of this Consent Decree, is defined as
22 any event arising from causes beyond the control of the Settling Defendants, or of
23 any entity controlled by Settling Defendants, that delays or prevents the
24 performance of any obligation under this Consent Decree despite Settling
25 Defendants' best efforts to fulfill the obligation. The requirement that the Settling
26 Defendants exercise "best efforts to fulfill the obligation" includes using best
27 efforts to anticipate any potential force majeure event and best efforts to address
28 the effects of any potential force majeure event (1) as it is occurring and

1 (2) following the potential force majeure event, such that the delay is minimized to
2 the greatest extent possible. "Force Majeure" does not include financial inability
3 to complete the Work.

4
5 26. If any event occurs or has occurred that may delay the performance of
6 any obligation under this Consent Decree, whether or not caused by a force
7 majeure event, the Settling Defendants shall notify orally EPA's Project
8 Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in
9 the event both of EPA's designated representatives are unavailable, the Superfund
10 Division Director, EPA Region IX, within five (5) days of when Settling
11 Defendants first knew that the event might cause a delay. Within five (5) days
12 thereafter, Settling Defendants shall provide in writing to EPA an explanation and
13 description of the reasons for the delay; the anticipated duration of the delay; all
14 actions taken or to be taken to prevent or minimize the delay; a schedule for
15 implementation of any measures to be taken to prevent or mitigate the delay or the
16 effect of the delay; the Settling Defendants' rationale for attributing such delay to
17 a force majeure event if it intends to assert such a claim; and a statement as to
18 whether, in the opinion of the Settling Defendants, such event may cause or
19 contribute to an endangerment to public health, welfare or the environment. The
20 Settling Defendants shall include with any notice all available documentation
21 supporting its claim that the delay was attributable to a force majeure. Failure to
22 comply with the above requirements shall preclude Settling Defendants from
23 asserting any claim of force majeure for that event for the period of time of such
24 failure to comply, and for any additional delay caused by such failure. Settling
25 Defendants shall be deemed to know of any circumstance of which Settling
26 Defendants, or any entity controlled by Settling Defendants knew or should have
27 known.
28

27. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

28. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 25 and 26, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XI. DISPUTE RESOLUTION

29. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to

1 resolve disputes arising under or with respect to this Consent Decree. However,
2 the procedures set forth in this Section shall not apply to actions by the United
3 States to enforce obligations of the Settling Defendants that have not been
4 disputed in accordance with this Section.

5
6 30. Any dispute which arises under or with respect to this Consent
7 Decree shall in the first instance be the subject of informal negotiations between
8 the parties to the dispute. The period for informal negotiations shall not exceed 20
9 days from the time the dispute arises, unless it is modified by written agreement of
10 the parties to the dispute. The dispute shall be considered to have arisen when one
11 party sends the other party a written Notice of Dispute.

12 31. Statements of Position.

13
14 a. In the event that the parties cannot resolve a dispute by
15 informal negotiations under the preceding Paragraph, then the position advanced
16 by EPA shall be considered binding unless, within 15 days after the conclusion of
17 the informal negotiation period, Settling Defendants invoke the formal dispute
18 resolution procedures of this Section by serving on the United States a written
19 Statement of Position on the matter in dispute, including, but not limited to, any
20 factual data, analysis or opinion supporting that position and any supporting
21 documentation relied upon by the Settling Defendants. The Statement of Position
22 shall specify the Settling Defendants' position as to whether formal dispute
23 resolution should proceed under Paragraph 32 or Paragraph 33.

24 b. Within 15 days after receipt of Settling Defendants' Statement
25 of Position, EPA will serve on Settling Defendants its Statement of Position,
26 including, but not limited to, any factual data, analysis, or opinion supporting that
27 position and all supporting documentation relied upon by EPA. EPA's Statement
28 of Position shall include a statement as to whether formal dispute resolution

1 should proceed under Paragraph 32 or 33. Within 10 days after receipt of EPA's
2 Statement of Position, Settling Defendants may submit a Reply.

3 c. If there is disagreement between EPA and the Settling
4 Defendants as to whether dispute resolution should proceed under Paragraph 32 or
5 33, the parties to the dispute shall follow the procedures set forth in the paragraph
6 determined by EPA to be applicable. However, if the Settling Defendants
7 ultimately appeal to the Court to resolve the dispute, the Court shall determine
8 which paragraph is applicable in accordance with the standards of applicability set
9 forth in Paragraphs 32 and 33.

10
11 32. Formal dispute resolution for disputes pertaining to the selection or
12 adequacy of any response action and all other disputes that are accorded review on
13 the administrative record under applicable principles of administrative law shall be
14 conducted pursuant to the procedures set forth in this Paragraph. For purposes of
15 this Paragraph, the adequacy of any response action includes, without limitation:
16 the adequacy of the performance of response actions taken pursuant to this
17 Consent Decree. Nothing in this Consent Decree shall be construed to allow any
18 dispute by Settling Defendants regarding the validity of the Amended ROD's
19 provisions.

20 a. An administrative record of the dispute shall be maintained by
21 EPA and shall contain all statements of position, including supporting
22 documentation, submitted pursuant to this Section. Where appropriate, EPA may
23 allow submission of supplemental statements of position by the parties to the
24 dispute.

25
26 b. The Superfund Division Director, EPA Region IX, will issue a
27 final administrative decision resolving the dispute based on the administrative
28 record described in Paragraph 32.a. This decision shall be binding upon the

1 Settling Defendants, subject only to the right to seek judicial review pursuant to
2 Paragraphs 32.c and d.

3
4 c. Any administrative decision made by EPA pursuant to
5 Paragraph 32.b. shall be reviewable by this Court, provided that a motion for
6 judicial review of the decision is filed by the Settling Defendants with the Court
7 and served on all Parties within 10 days of Settling Defendants' actual receipt of
8 EPA's decision. The motion shall include a description of the matter in dispute,
9 the efforts made by the parties to resolve it, the relief requested, and the schedule,
10 if any, within which the dispute must be resolved to ensure orderly implementation
11 of this Consent Decree. The United States may file a response to Settling
12 Defendants' motion and Settling Defendants may file a reply thereto, if allowed by
13 the Court.

14 d. In proceedings on any dispute governed by this Paragraph,
15 Settling Defendants shall have the burden of demonstrating that the decision of the
16 Superfund Division Director is arbitrary and capricious or otherwise not in
17 accordance with law. Judicial review of EPA's decision shall be on the
18 administrative record compiled pursuant to Paragraph 32.a.

19
20 33. Formal dispute resolution for disputes that neither pertain to the
21 selection or adequacy of any response action nor are otherwise accorded review on
22 the administrative record under applicable principles of administrative law, shall
23 be governed by this Paragraph.

24 a. Following receipt of Settling Defendants' Statement of Position
25 submitted pursuant to Paragraph 31, the Superfund Division Director, EPA Region
26 IX, will issue a final decision resolving the dispute. The Superfund Division
27 Director's decision shall be binding on the Settling Defendants unless, within 10
28 days of receipt of the decision, the Settling Defendants file with the Court and

1 serve on the United States a motion for judicial review of the decision setting forth
2 the matter in dispute, the efforts made by the parties to resolve it, the relief
3 requested, and the schedule, if any, within which the dispute must be resolved to
4 ensure orderly implementation of the Consent Decree. The United States may file
5 a response to Settling Defendants' motion and Settling Defendants may file a reply
6 thereto, if allowed by the Court.

7 b. Judicial review of any dispute governed by this Paragraph shall
8 be governed by applicable principles of law.
9

10 34. The invocation of formal dispute resolution procedures under this
11 Section shall not extend, postpone or affect in any way any obligation of the
12 Settling Defendants under this Consent Decree, not directly in dispute, unless EPA
13 or the Court agrees otherwise. Stipulated penalties with respect to the disputed
14 matter shall continue to accrue but payment shall be stayed pending resolution of
15 the dispute as provided in Paragraph 38. Notwithstanding the stay of payment,
16 stipulated penalties shall accrue from the first day of noncompliance with any
17 applicable provision of this Consent Decree. In the event that the Settling
18 Defendants do not prevail on the disputed issue, stipulated penalties shall be
19 assessed and paid as provided in Section XII (Stipulated Penalties).

20 XII. STIPULATED PENALTIES

21

22 35. Settling Defendants shall be liable for stipulated penalties in the
23 amounts set forth in Paragraphs 36 and 37 to the United States for failure to
24 comply with the requirements of this Consent Decree specified below, unless
25 excused under Section X (Force Majeure), provided, however, that liability for
26 stipulated penalties for failure to make payment of Past Response Costs pursuant
27 to Paragraph 21.a. or 21.b. shall not be joint and several. "Compliance" by
28 Settling Defendants shall include completion of the activities under this Consent

Decree identified below in accordance with all applicable requirements of law and this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

36. Stipulated Penalty Amounts -- Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 36.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,500	31st day and beyond

b. Compliance Milestones.

(1) Failure to execute and record the Environmental Restriction Covenant as required by Paragraph 12.

(2) Failure to execute and record the Environmental Restriction Covenant as required by Subparagraphs 24.b.

(3) Failure to use best efforts to obtain release or subordination of all prior liens and encumbrances on the Property, as required by Paragraphs 12.c. and 24.

(4) Failure to send notices as required by Paragraph 12.e.

(5) Violation of land/water use restrictions listed in Paragraph 11.a.

1 (6) Violation of access provisions of Paragraph 10.a.

2 37. Stipulated Penalty Amounts – Payments

3
4 a. The following stipulated penalties shall accrue per violation per
5 day for any noncompliance identified in Subparagraph 37.b.:

6 Penalty Per Violation Per Day Period of Noncompliance

7
8 \$200 1st through 14th day

9 \$400 15th through 30th day

10 \$1,000 31st day and beyond

11
12 b. Compliance Milestones.

13
14 (1) Failure to make payment of Past Response Costs as
15 required by Paragraphs 20.a., 21.a and b., and 22.

16 (2) Failure to make payment of costs of foreclosure as
17 required by Paragraph 23.c.

18
19 38. All penalties shall begin to accrue on the day after the complete
20 performance is due or the day a violation occurs, and shall continue to accrue
21 through the final day of the correction of the noncompliance or completion of the
22 activity. However, stipulated penalties shall not accrue: (1) with respect to a
23 decision by the Superfund Division Director, EPA Region IX, under
24 Paragraph 32.b or 33.a of Section XI (Dispute Resolution), during the period, if
25 any, beginning on the 21st day after the date that Settling Defendants' reply to
26 EPA's Statement of Position is received until the date that the Director issues a
27 final decision regarding such dispute; or (2) with respect to judicial review by this
28 Court of any dispute under Section XI (Dispute Resolution), during the period, if

1 any, beginning on the 31st day after the Court's receipt of the final submission
2 regarding the dispute until the date that the Court issues a final decision regarding
3 such dispute. Nothing herein shall prevent the simultaneous accrual of separate
4 penalties for separate violations of this Consent Decree.

5
6 39. If EPA determines that Settling Defendants have failed to comply
7 with a requirement of this Consent Decree, EPA shall give Settling Defendants
8 written notification of the same and describe the noncompliance. EPA may send
9 the Settling Defendants a written demand for the payment of the penalties.
10 However, penalties shall accrue as provided in the preceding Paragraph regardless
11 of whether EPA has notified the Settling Defendants of a violation.

12 40. Settling Defendants shall pay all penalties accruing under this Section
13 to the United States within 30 days of the Settling Defendants' receipt from EPA
14 of a demand for payment of the penalties, unless Settling Defendants invoke the
15 Dispute Resolution procedures under Section XI (Dispute Resolution). All
16 payments to the United States under this Section shall be paid by certified or
17 cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall
18 be mailed to Mellon BankEPA - Region 9, Attn: Superfund Accounting, P.O. Box
19 371099M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated
20 penalties, and shall reference the EPA Region and Site/Spill ID #09-C1, the DOJ
21 Case Number 90-11-2-1000/2, and the name and address of the party making
22 payment. Copies of checks paid pursuant to this Section, and any accompanying
23 transmittal letter(s), shall be sent to the United States as provided in Section XVIII
24 (Notices and Submissions), and to David Wood, Chief, Cost Accounting, U.S.
25 EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105.

26 41. The payment of penalties shall not alter in any way Settling
27 Defendants' obligation to complete the performance of the Work required under
28 this Consent Decree.

1 42. Penalties shall continue to accrue as provided in Paragraph 38 during
2 any dispute resolution period, but need not be paid until the following:

3 a. If the dispute is resolved by agreement or by a decision of EPA
4 that is not appealed to this Court, accrued penalties determined to be owing shall
5 be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or
6 order;

7
8 b. If the dispute is appealed to this Court and the United States
9 prevails in whole or in part, Settling Defendants shall pay all accrued penalties
10 determined by the Court to be owed to EPA within 60 days of receipt of the
11 Court's decision or order, except as provided in Subparagraph c. below;

12 c. If the District Court's decision is appealed by any Party,
13 Settling Defendants shall pay all accrued penalties determined by the District
14 Court to be owing to the United States into an interest-bearing escrow account
15 within 60 days of receipt of the Court's decision or order. Penalties shall be paid
16 into this account as they continue to accrue, at least every 60 days. Within 15 days
17 of receipt of the final appellate court decision, the escrow agent shall pay the
18 balance of the account to EPA or to Settling Defendants to the extent that they
19 prevail.
20

21 43. If Settling Defendants fail to pay stipulated penalties when due, the
22 United States may institute proceedings to collect the penalties, as well as interest.
23 Settling Defendants shall pay Interest on the unpaid balance, which shall begin to
24 accrue on the date of demand made pursuant to Paragraph 39.

25 44. Nothing in this Consent Decree shall be construed as prohibiting,
26 altering, or in any way limiting the ability of the United States to seek any other
27 remedies or sanctions available by virtue of Settling Defendants' violation of this
28

1 Decree or of the statutes and regulations upon which it is based, including, but not
2 limited to, penalties pursuant to Section 122(l) of CERCLA, provided, however,
3 that the United States shall not seek civil penalties pursuant to Section 122(l) of
4 CERCLA for any violation for which a stipulated penalty is provided herein,
5 except in the case of a willful violation of the Consent Decree.

6
7 45. Notwithstanding any other provision of this Section, the United States
8 may, in its unreviewable discretion, waive any portion of stipulated penalties that
9 have accrued pursuant to this Consent Decree.

10 XIII. COVENANTS NOT TO SUE BY PLAINTIFF

11 46. United States' Covenant Not to Sue. In consideration of the actions
12 that will be performed and the payments that will be made by the Settling
13 Defendants under the terms of the Consent Decree, and except as specifically
14 provided in Paragraphs 47, 48, and 50 of this Section, the United States covenants
15 not to sue or to take administrative action against Settling Defendants pursuant to
16 Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to
17 future liability, these covenants not to sue shall take effect upon the receipt by
18 EPA of the payments required by Paragraph 21 of Section IX (Payments for
19 Response Costs). With respect to future liability, these covenants not to sue shall
20 take effect upon certification of the completion of the Remedial Action by EPA,
21 which shall occur when Remedial Action for the Site has been completed. With
22 respect to each Settling Defendant individually, these covenants not to sue are
23 conditioned upon the satisfactory performance by Settling Defendant of all
24 obligations under this Consent Decree and the veracity of the information
25 provided to EPA by Settling Defendant relative to Settling Defendant's
26 involvement with the Site. These covenants not to sue extend only to the Settling
27 Defendants and do not extend to any other person.
28

1 47. Plaintiff's Pre-certification Reservations. Notwithstanding any other
2 provision of this Consent Decree, the United States reserves, and this Consent
3 Decree is without prejudice to, the right to institute proceedings in this action or in
4 a new action, or to issue an administrative order seeking to compel Settling
5 Defendants

6 a. to perform further response actions relating to the Site, or

7
8 b. to reimburse the United States for additional costs of response
9 if, prior to certification of completion of the Remedial Action:

10 (1) conditions at the Site, previously unknown to EPA, are
11 discovered, or

12 (2) information, previously unknown to EPA, is received, in
13 whole or in part,
14

15 and EPA determines that these previously unknown conditions or information
16 together with any other relevant information indicates that the Remedial Action is
17 not protective of human health or the environment.
18

19 48. Plaintiff's Post-certification Reservations. Notwithstanding any other
20 provision of this Consent Decree, the United States reserves, and this Consent
21 Decree is without prejudice to, the right to institute proceedings in this action or in
22 a new action, or to issue an administrative order seeking to compel Settling
23 Defendants

24 a. to perform further response actions relating to the Site, or

25
26 b. to reimburse the United States for additional costs of response
27 if, subsequent to certification of completion of the Remedial Action:
28

1 (1) conditions at the Site, previously unknown to EPA, are
2 discovered, or

3 (2) information, previously unknown to EPA, is received, in
4 whole or in part,
5

6 and EPA determines that these previously unknown conditions or this information
7 together with other relevant information indicate that the Remedial Action is not
8 protective of human health or the environment.

9
10 49. For purposes of Paragraph 47, the information and the conditions
11 known to EPA shall include only that information and those conditions known to
12 EPA as of the date the Amended ROD was signed and set forth in the Amended
13 ROD for the Site and the administrative record supporting the Amended ROD.
14 For purposes of Paragraph 48, the information and the conditions known to EPA
15 shall include only that information and those conditions known to EPA as of the
16 date of certification of completion of the Remedial Action and set forth in the
17 Amended ROD, the administrative record supporting the Amended ROD, the post-
18 Amended ROD administrative record, or in any information received by EPA
19 pursuant to the requirements of this Consent Decree prior to certification of
20 completion of the Remedial Action.

21 50. United States' General reservations of rights. The United States
22 reserves, and this Consent Decree is without prejudice to, all rights against
23 Settling Defendants with respect to all matters not expressly included within the
24 United States' covenants not to sue. Notwithstanding any other provision of this
25 Consent Decree, the United States reserves all rights against Settling Defendants
26 with respect to:
27
28

1 a. claims based on a failure by Settling Defendants to meet a
2 requirement of this Consent Decree;

3 b. liability arising from the past, present, or future disposal,
4 release, or threat of release of Waste Material outside of the Site or at the Site;

5 c. liability for damages for injury to, destruction of, or loss of
6 natural resources, and for the costs of any natural resource damage assessments;

7 d. criminal liability;

8 e. liability for violations of federal or state law which occur
9 during or after implementation of the Work; and

10 f. liability, prior to Certification of Completion of the Remedial
11 Action, for additional response actions that EPA determines are necessary to
12 achieve Performance Standards, but that cannot be required pursuant to
13 Paragraph 18 (Modification of the Land Use Restrictions).

14
15
16
17 51. Notwithstanding any other provision of this Consent Decree, the
18 United States retains all authority and reserves all rights to take any and all
19 response actions authorized by law.

20 XIV. COVENANTS BY SETTLING DEFENDANTS

21
22 52. Covenant Not to Sue. Subject to the reservations in Paragraph 53,
23 Settling Defendants hereby covenant not to sue and agree not to assert any claims
24 or causes of action against the United States with respect to the Site or this
25 Consent Decree, including, but not limited to:

26 a. any direct or indirect claim for reimbursement from the
27 Hazardous Substance Superfund (established pursuant to the Internal Revenue
28

1 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113
2 or any other provision of law;

3 b. any claims against the United States, including any department,
4 agency or instrumentality of the United States, under CERCLA Sections 107 or
5 113 related to the Site;

6
7 c. any claims arising out of response actions at or in connection
8 with the Site, including any claim under the United States Constitution, the Tucker
9 Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as
10 amended, or at common law.

11 Except as provided in Paragraph 59 (Waiver of Claim-Splitting Defenses),
12 these covenants not to sue shall not apply in the event that the United States brings
13 a cause of action or issues an order pursuant to the reservations set forth in
14 Paragraphs 47, 48, and 50 (b) - (c), but only to the extent that Settling Defendants'
15 claims arise from the same response action, response costs, or damages that the
16 United States is seeking pursuant to the applicable reservation.

17
18 53. The Settling Defendants reserve, and this Consent Decree is without
19 prejudice to, claims against the United States, subject to the provisions of Chapter
20 171 of Title 28 of the United States Code, for money damages for injury or loss of
21 property or personal injury or death caused by the negligent or wrongful act or
22 omission of any employee of the United States while acting within the scope of his
23 office or employment under circumstances where the United States, if a private
24 person, would be liable to the claimant in accordance with the law of the place
25 where the act or omission occurred. However, any such claim shall not include a
26 claim for any damages caused, in whole or in part, by the act or omission of any
27 person, including any contractor, who is not a federal employee as that term is
28 defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on

1 EPA's selection of response actions, or the oversight or approval of the Settling
2 Defendants' activities. The foregoing applies only to claims which are brought
3 pursuant to any statute other than CERCLA and for which the waiver of sovereign
4 immunity is found in a statute other than CERCLA.

5
6 54. Nothing in this Consent Decree shall be deemed to constitute
7 preauthorization of a claim within the meaning of Section 111 of CERCLA,
8 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

9 XV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

10 55. Nothing in this Consent Decree shall be construed to create any rights
11 in, or grant any cause of action to, any person not a Party to this Consent Decree.
12 The preceding sentence shall not be construed to waive or nullify any rights that
13 any person not a signatory to this decree may have under applicable law. Each of
14 the Parties expressly reserves any and all rights (including, but not limited to, any
15 right to contribution), defenses, claims, demands, and causes of action which each
16 Party may have with respect to any matter, transaction, or occurrence relating in
17 any way to the Site against any person not a Party hereto.
18

19 56. The Parties agree, and by entering this Consent Decree this Court
20 finds, that the Settling Defendants are entitled, as of the Effective Date, to
21 protection from contribution actions or claims as provided by CERCLA Section
22 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree.

23 a. The "matters addressed" in this Consent Decree are all
24 response actions taken or to be taken and all response costs incurred or to be
25 incurred by the United States or any other person with respect to the Site. The
26 "matters addressed" in this Consent Decree do not include those response costs or
27 response actions as to which the United States, or its departments, agencies or
28

1 instrumentalities have reserved their rights under this Consent Decree (except for
2 claims for failure to comply with this Consent Decree), in the event that the United
3 States asserts rights against Settling Defendants coming within the scope of such
4 reservations.

5
6 57. The Settling Defendants agree that with respect to any suit or claim
7 for contribution brought by it for matters related to this Consent Decree, it will
8 notify the United States in writing no later than 60 days prior to the initiation of
9 such suit or claim.

10 58. The Settling Defendants also agree that with respect to any suit or
11 claim for contribution brought against it for matters related to this Consent Decree,
12 it will notify in writing the United States within 10 days of service of the
13 complaint on them. In addition, Settling Defendants shall notify the United States
14 within 10 days of service or receipt of any Motion for Summary Judgment and
15 within 10 days of receipt of any order from a court setting a case for trial.

16 59. In any subsequent administrative or judicial proceeding initiated by
17 the United States for injunctive relief, recovery of response costs, or other
18 appropriate relief relating to the Site, Settling Defendants shall not assert, and may
19 not maintain, any defense or claim based upon the principles of waiver, res
20 judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses
21 based upon any contention that the claims raised by the United States in the
22 subsequent proceeding were or should have been brought in the instant case;
23 provided, however, that nothing in this Paragraph affects the enforceability of the
24 covenants not to sue set forth in Section XIII (Covenants Not to Sue by Plaintiff).
25
26
27
28

1 XVI. ACCESS TO INFORMATION

2 60. Settling Defendants shall provide to EPA, upon request, copies of all
3 documents and information within their possession or control or that of their
4 agents relating to activities at the Site or to the implementation of this Consent
5 Decree. Settling Defendants shall also make available to EPA, for purposes of
6 investigation, information gathering, or testimony, their employees, agents, or
7 representatives with knowledge of relevant facts concerning the implementation of
8 this Consent Decree.
9

10 61. Business Confidential and Privileged Documents.

11 a. Settling Defendants may assert business confidentiality claims
12 covering part or all of the documents or information submitted to Plaintiff under
13 this Consent Decree to the extent permitted by and in accordance with Section
14 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
15 Documents or information determined to be confidential by EPA will be afforded
16 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
17 confidentiality accompanies documents or information when they are submitted to
18 EPA, or if EPA has notified Settling Defendants that the documents or information
19 are not confidential under the standards of Section 104(e)(7) of CERCLA or
20 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or
21 information without further notice to Settling Defendants.
22

23 b. The Settling Defendants may assert that certain documents,
24 records and other information are privileged under the attorney-client privilege or
25 any other privilege recognized by applicable law. If the Settling Defendants assert
26 such a privilege in lieu of providing documents, they shall provide the Plaintiff
27 with the following: (1) the title of the document, record, or information; (2) the
28 date of the document, record, or information; (3) the name and title of the author

1 of the document, record, or information; (4) the name and title of each addressee
2 and recipient; (5) a description of the contents of the document, record, or
3 information: and (6) the privilege asserted by Settling Defendants. However, no
4 documents, reports or other information created or generated pursuant to the
5 requirements of the Consent Decree shall be withheld on the grounds that they are
6 privileged.

7
8 62. No claim of confidentiality shall be made with respect to any data,
9 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,
10 scientific, chemical, or engineering data, or any other documents or information
11 evidencing conditions at or around the Site.

12 XVII. RETENTION OF RECORDS

13
14 63. Until 10 years after the Settling Defendants have caused the
15 Environmental Restriction Covenant to be recorded, as required by Paragraph 12,
16 or until 10 years after the Settling Defendants have effected a Transfer of all of the
17 Property, whichever is earlier, Settling Defendants shall preserve and retain all
18 non-identical copies of records and documents (including records or documents in
19 electronic form) now in its possession or control or which come into its possession
20 or control that relate in any manner to its liability under CERCLA with respect to
21 the Site, provided, however, that Settling Defendants must retain, in addition, all
22 documents and records that relate to the liability of any other person under
23 CERCLA with respect to the Site. Each of the above record retention
24 requirements shall apply regardless of any corporate retention policy to the
25 contrary.

26 64. At the conclusion of this document retention period, Settling
27 Defendants shall notify the United States at least 90 days prior to the destruction
28 of any such records or documents, and, upon request by the United States, Settling

1 Defendants shall deliver any such records or documents to EPA. The Settling
2 Defendants may assert that certain documents, records and other information are
3 privileged under the attorney-client privilege or any other privilege recognized by
4 federal law. If the Settling Defendants assert such a privilege, they shall provide
5 the Plaintiff with the following: (1) the title of the document, record, or
6 information; (2) the date of the document, record, or information; (3) the name and
7 title of the author of the document, record, or information; (4) the name and title of
8 each addressee and recipient; (5) a description of the subject of the document,
9 record, or information; and (6) the privilege asserted by Settling Defendants.
10 However, no documents, reports or other information which must be created or
11 generated pursuant to the requirements of the Consent Decree shall be withheld on
12 the grounds that they are privileged.

13
14 XVIII. NOTICES AND SUBMISSIONS

15 65. Whenever, under the terms of this Consent Decree, written notice is
16 required to be given or a report or other document is required to be sent by one
17 Party to another, it shall be directed to the individuals at the addresses specified
18 below, unless those individuals or their successors give notice of a change to the
19 other Parties in writing. All notices and submissions shall be considered effective
20 upon receipt, unless otherwise provided. Written notice as specified herein shall
21 constitute complete satisfaction of any written notice requirement of the Consent
22 Decree with respect to the United States, EPA, and Settling Defendants,
23 respectively.

24 As to the United States:

25 Chief, Environmental Enforcement
26 Section
27 Environment and Natural Resources
28 Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-1000/2

1 Superfund Division Director
2 United States Environmental Protection
3 Agency
4 Region IX
5 75 Hawthorne St.
6 San Francisco, CA 94105
7 Re: WDI Superfund Site

8 As to EPA:

9 Russell Mechem
10 EPA Project Coordinator
11 United States Environmental Protection
12 Agency
13 Region IX
14 75 Hawthorne St.
15 San Francisco, CA 94105
16 Re: WDI Superfund Site

17 As to the Regional Financial Management Officer:

18 David Wood, Chief, Cost Accounting
19 United States Environmental Protection
20 Agency
21 Region IX
22 75 Hawthorne St.
23 San Francisco, CA 94105
24 Re: WDI Superfund Site

25 As to the Settling Defendants:

26 Adeline R. Bennett, MD Living Trust
27 c/o Fernando Villa
28 Greenberg Traurig LLP
29 2450 Colorado Ave., Suite 400E
30 Santa Monica, CA 90404
31
32 Pitts Grandchildren's Trust
33 c/o John Van Vlear
34 Voss, Cook & Thel LLP
35 P.O. Box 2290
36 Newport Beach, CA 92658

37 XVIII. EFFECTIVE DATE

38 66. The effective date of this Consent Decree shall be the date upon
39 which this Consent Decree is entered by the Court, except as otherwise provided
40 herein.
41
42
43
44

1 XIX. RETENTION OF JURISDICTION

2 67. This Court retains jurisdiction over both the subject matter of this
3 Consent Decree and the Settling Defendants for the duration of the performance of
4 the terms and provisions of this Consent Decree for the purpose of enabling any of
5 the Parties to apply to the Court at any time for such further order, direction, and
6 relief as may be necessary or appropriate for the construction or modification of
7 this Consent Decree, or to effectuate or enforce compliance with its terms, or to
8 resolve disputes in accordance with Section XI (Dispute Resolution) hereof.
9

10 XX. APPENDICES

11 68. The following appendices are attached to and incorporated into this
12 Consent Decree:

13 “Appendix A” is the Amended ROD.
14

15 “Appendix B” is the description and map of the Site.
16

17 “Appendix C” is the Environmental Restriction Covenant.
18

19 “Appendix D” is the description and map of the Property owned by Settling
20 Defendants.

21 “Appendix E” is a copy of the Individual Grant Deed for the Property from
22 Cecilia Pitts, individually and as Trustee of the Pitts Family Trust, to the Pitts
23 Grandchildren’s Trust, dated July 1, 1987.
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XXI. MODIFICATION

69. Schedules specified in this Consent Decree for completion of the obligations may be modified by agreement of the Settling Defendants and EPA. All such modifications shall be made in writing.

70. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

71. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

72. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXIII. SIGNATORIES/SERVICE

73. The undersigned representatives of the Settling Defendants to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certify that he or she is

1 fully authorized to enter into the terms and conditions of this Consent Decree and
2 to execute and legally bind such Party to this document.

3
4 74. Settling Defendants hereby agree not to oppose entry of this Consent
5 Decree by this Court or to challenge any provision of this Consent Decree unless
6 the United States has notified the Settling Defendants in writing that it no longer
7 supports entry of the Consent Decree.

8 75. Settling Defendants shall identify, on the attached signature page, the
9 name, address and telephone number of an agent who is authorized to accept
10 service of process by mail on behalf of that Party with respect to all matters arising
11 under or relating to this Consent Decree. Settling Defendants hereby agree to
12 accept service in that manner and to waive the formal service requirements set
13 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local
14 rules of this Court, including, but not limited to, service of a summons. The
15 parties agree that Settling Defendants need not file an answer to the complaint in
16 this action unless or until the court expressly declines to enter this Consent
17 Decree.

18
19 XXIV. FINAL JUDGMENT

20 76. This Consent Decree and its appendices constitute the final, complete,
21 and exclusive agreement and understanding among the parties with respect to the
22 settlement embodied in the Consent Decree. The parties acknowledge that there
23 are no representations, agreements or understandings relating to the settlement
24 other than those expressly contained in this Consent Decree.

1 77. Upon approval and entry of this Consent Decree by the Court, this
2 Consent Decree shall constitute a final judgment between and among the United
3 States and the Settling Defendants. The Court finds that there is no just reason for
4 delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P.
5 54 and 58.

6 SO ORDERED THIS __ DAY OF _____, 20__.

7
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11 _____
12 United States District Judge
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
United States v. Adeline R. Bennett, MD Living Trust, et al. relating to the Waste
Disposal, Inc. Superfund Site.

FOR THE UNITED STATES OF AMERICA

10/28/05
Date

for Keith Takata
Director, Superfund Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

9/15/05
Date

Sarah E. Mueller
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne St., ORC-3
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 United States v. Adeline R. Bennett, MD Living Trust, et al. Relating to the Waste
3 Disposal, Inc. Superfund Site
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5

6 **FOR THE UNITED STATES OF AMERICA**
7

8 12-5-05
9 Date

10 Sue Ellen Wooldridge
11 Assistant Attorney General
12 Environment and Natural Resources
13 Division
14 U.S. Department of Justice
15 Washington, D.C. 20530
16

17 11-14-05
18 Date

19 Cheryl L. Smoot
20 Environmental Enforcement Section
21 Environment and Natural Resources
22 Division
23 U.S. Department of Justice
24 P.O. Box 7611
25 Washington, D.C. 20044-7611
26

27
28 Date

Debra Wong Yang
United States Attorney
Central District of California
U.S. Department of Justice
1200 U.S. Courthouse
312 N. Spring St.
Los Angeles, CA 90012

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2
3 United States v. Adeline R. Bennett, MD Living Trust, et al. relating to the Waste
4 Disposal, Inc. Superfund Site.
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7

8 **FOR PITTS GRANDCHILDREN'S TRUST**
9
10
11

12 9-7-2005
13 Date

Signature: _____
Name (print): MARVIN PITTS
Title: TRUSTEE
Address: PO BOX 3452
CLACKSVILLE TN 37043

14
15
16
17 Agent Authorized to Accept Service on Behalf of Above-signed Party:
18
19

20 Name (print): _____
21 Title: _____
22 Address: _____

23 Ph. Number: _____
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
2 Adeline R. Bennett, MD Living Trust, et al. relating to the Waste Disposal, Inc. Superfund Site.
3

4 **FOR ADELINE R. BENNETT, MD LIVING TRUST**
5
6
7
8

9 8-31-05
Date

Signature: [Signature]
Name (print): WIEGLE, Richard
Title: Trustee
Address: 5251 Cimarron St
Los Angeles
CA 90062

14 Agent Authorized to Accept Service on Behalf of Above-signed Party:
15
16

17 Name (print): /
18 Title: /
Address: 2450 Colorado Ave., Suite 400E
Santa Monica, CA 90404
19
20 Ph. Number: (310) 586-~~0278~~
7848
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